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PP v. KHAIRUDDIN ABU HASSAN & ANOR

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
AHMADI ASNAWI JCA
KAMARDIN HASHIM JCA
B [CRIMINAL APPEAL NO: W-09-320-11-2015]
21 FEBRUARY 2017

C ***CRIMINAL LAW:*** *Penal Code – Section 124L – Whether falls within constitutional ambit of Security Offences (Special Measures) Act 2012 ('SOSMA') – Whether s. 124L falls within art. 149(1)(e) of Federal Constitution – Express exclusion of para. (e) of art. 149(1) from preamble of SOSMA – Whether s. 124L intended by Parliament to be categorised as security offences – Whether bailable offence – Whether offence ought to be tried by Sessions Court*

D ***CONSTITUTIONAL LAW:*** *Legislation – Act of Parliament – Security Offences (Special Measures) Act 2012 ('SOSMA') – Whether offence under s. 124L of Penal Code falls within art. 149(1)(e) of Federal Constitution – Express exclusion of para. (e) of art. 149(1) from preamble of SOSMA – Whether s. 124L intended by Parliament to be categorised as security offences*

E ***STATUTORY INTERPRETATION:*** *Construction of statutes – Intention of Parliament – Whether offence under s. 124L of Penal Code falls within constitutional ambit of Security Offences (Special Measures) Act 2012 ('SOSMA') – Offence falls within art. 149(1)(e) of Federal Constitution – Express exclusion of para. (e) of art. 149(1) from preamble of SOSMA – Whether s. 124L intended by Parliament to be categorised as security offences*

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Khairuddin Abu Hassan and Matthias Chang Weng Chieh ('the respondents') were charged in the High Court for acting with common intention to attempt to commit sabotage of the banking and financial services of this country, an offence under s. 124L of the Penal Code ('Code') read with s. 34 of the same
G Code. The respondents filed a notice of motion seeking orders, *inter alia*, that the charge under s. 124L of the Penal Code falls outside the ambit of the Security Offences (Special Measures) Act 2012 ('SOSMA'). Pursuant to s. 84 of the Courts of Judicature Act 1964, the High Court referred the question, *inter alia*, of whether the charge against the respondents under s. 124L of the Penal Code falls outside the constitutional ambit of SOSMA pursuant to the
H provision of art. 149(1)(e) of the Federal Constitution ('FC'). The Federal Court declined to answer the questions posed and directed that the matter be decided by the High Court. The High Court proceeded to decide that the offence under s. 124L of the Penal Code is not a security offence falling within the purview and ambit of SOSMA and that by the express exclusion
I of para. (e) of art. 149(1) of the FC in the preamble of SOSMA, the

Parliament, in enacting SOSMA, never intended to designate such action described or stipulated therein as security offence. Hence, the High Court held that: (i) the charge against the respondents under s. 124L of the Penal Code fell outside the constitutional ambit of SOSMA pursuant to art. 149(1)(e) of the FC; (ii) that the respondents had the right to be released on bail; and (iii) that the charge against the respondents be tried in the Sessions Court. Aggrieved by the decision, the prosecution appealed to this court and raised the following issues for the court's determination: (i) whether SOSMA is a law promulgated under art. 149 of the FC; (ii) whether the failure or omission to include the recital of art. 149(1)(e) of the FC renders SOSMA to fall outside the ambit of art. 149 of the FC; (iii) whether the First Schedule of SOSMA is null and void and of no effect notwithstanding that it has not been declared unconstitutional; and (iv) whether offences under s. 124L of the Penal Code must be tried in accordance with ss. 12 and 13 of SOSMA.

Held (dismissing appeal)

Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) Pursuant to s. 124L of the Penal Code, it is an offence to sabotage essential services. The charge against the respondents was for attempting to sabotage the banking and financial services of the country. Banking and financial service is included in the definition of essential services. The offence under s. 124L of the Penal Code fall within art. 149(1)(e) of the FC, namely an act 'which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof'. (paras 26 & 27)

(2) SOSMA is intended by the Parliament to combat terrorism. The preamble of SOSMA shows that it is enacted to deal with four out of the six categories of action under art. 149(1) of the FC *ie*, paras. (a), (b), (d) and (f) and not the action under paras. (c) and (e). Further, the scheme and the provisions of SOSMA are designed to limit the fundamental liberties under arts. 5, 9, 10, and 13 of the FC and to depart from the procedures laid down under the Criminal Procedure Code. Although SOSMA merely regulates the trial of the offences and does not create the said offences, undoubtedly a person charged and tried under SOSMA will lose his liberty as he will be denied bail. Therefore, in interpreting SOSMA the court should be guided by the principle of giving full recognition to the fundamental rights and freedoms. (paras 33, 34 & 36)

(3) Every Act of Parliament or law enacted under art. 149 must stipulate specifically the action that has been taken by the body of persons, which necessitates the promulgation of such a law. There are specific actions enumerated in art. 149(1) of the FC and SOSMA has adopted or recited only some of the actions. Whilst there was no ambiguity that SOSMA

was enacted under art. 149(1)(a), (b), (d) and (f) of the FC, there was ambiguity whether the charge against the respondents under s. 124L of the Penal Code was intended by the Parliament to be categorised as security offences under art. 149(1) of the FC. (paras 35 & 36)

(4) Applying the principles of statutory interpretation, the action which the respondents were alleged to attempt to commit fell within the ambit and purview of para. (e) of art. 149(1) of the FC and by the express exclusion of para. (e) of art. 149(1) in the recital of SOSMA, Parliament could not have intended to designate such act as a security offence. (para 44)

Bahasa Malaysia *Headnotes*

Khairuddin Abu Hassan dan Matthias Chang Weng Chieh ('responden-resonden') dipertuduh di Mahkamah Tinggi kerana bertindak dengan niat bersama cuba melakukan sabotaj terhadap perkhidmatan perbankan dan kewangan negara ini, satu kesalahan bawah s. 124L Kanun Keseksaan ('Kanun') dibaca bersama-sama dengan s. 34 Kanun yang sama. Responden-responden memfailkan notis usul memohon perintah, antara lain, bahawa pertuduhan bawah s. 124L Kanun tidak terangkum dalam Akta Kesalahan Keselamatan (Langkah-langkah Khas) 2012 ('SOSMA'). Menurut s. 84 Akta Mahkamah Kehakiman 1964, Mahkamah Tinggi merujuk antara lain, kepada persoalan sama ada pertuduhan terhadap responden-responden di bawah s. 24L Kanun terangkum luar ruang lingkup perlembagaan SOSMA menurut peruntukan per. 149(1)(e) Perlembagaan Persekutuan ('Perlembagaan'). Mahkamah Persekutuan menolak untuk menjawab persoalan-persoalan yang dikemukakan dan mengarahkan perkara tersebut diputuskan oleh Mahkamah Tinggi. Mahkamah Tinggi meneruskan untuk memutuskan bahawa kesalahan di bawah s. 124L Kanun bukan suatu kesalahan keselamatan yang terangkum dalam ruang lingkup SOSMA dan melalui pengecualian langsung perenggan (e) per. 149(1) Perlembagaan dalam mukadimah SOSMA, Parlimen, dalam menggubal SOSMA, tidak pernah meniatkan untuk memasukkan tindakan yang digambarkan atau dinyatakan di dalamnya sebagai kesalahan keselamatan. Dengan itu, Mahkamah Tinggi memutuskan bahawa: (i) pertuduhan terhadap responden-responden bawah s. 124L Kanun terangkum luar ruang lingkup perlembagaan SOSMA menurut per. 149(1)(e) Perlembagaan; (ii) responden-responden berhak dibebaskan atas ikat jamin; dan (iii) pertuduhan terhadap responden-responden dibicarakan di Mahkamah Sesyen. Terkilan dengan keputusan tersebut, pihak pendakwaan merayu ke mahkamah ini dan membangkitkan isu-isu berikut bagi pemutusan mahkamah: (i) sama ada SOSMA adalah undang-undang yang diisytiharkan bawah per. 149 Perlembagaan; (ii) sama ada kegagalan atau ketinggalan memasukkan resital per. 149(1)(e) Perlembagaan menjadikan SOSMA terangkum luar ruang lingkup per. 149 Perlembagaan; (iii) sama ada

Jadual Pertama SOSMA batal dan tidak sah dan tiada kesan walaupun tidak diisytiharkan tidak berperlembagaan; dan (iv) sama ada kesalahan-kesalahan bawah s. 124L Kanun mesti dibicarakan menurut ss. 12 dan 13 SOSMA.

Diputuskan (menolak rayuan)
Oleh Tengku Maimun Tuan Mat HMR menyampaikan penghakiman mahkamah:

(1) Menurut s. 124L Kanun, adalah satu kesalahan untuk mensabotaj perkhidmatan-perkhidmatan utama. Pertuduhan terhadap responden-responden adalah kerana mencuba mensabotaj perkhidmatan perbankan dan kewangan dalam negara. Perkhidmatan perbankan dan kewangan tergolong dalam definisi perkhidmatan-perkhidmatan utama. Kesalahan bawah s. 124L Kanun terangkum dalam perkara 149(1)(e) Perlembagaan, iaitu tindakan 'yang memprejudis penyelenggaraan atau pemfungsian apa-apa bekalan atau perkhidmatan kepada umum atau mana-mana kelas orang awam dalam Persekutuan atau sebahagian daripadanya'.

(2) SOSMA diniatkan oleh Parlimen untuk menangkis keganasan. Mukadimah SOSMA menunjukkan bahawa ia digubal untuk menangani empat daripada enam kategori tindakan bawah per. 149(1) Perlembagaan iaitu perenggan (a), (b), (d) dan (f) dan bukan tindakan bawah perenggan (c) dan (e). Selanjutnya, skema dan peruntukan-peruntukan SOSMA dibentuk untuk menghadkan kebebasan asasi bawah per. 5, 9, 10 dan 13 Perlembagaan dan menyimpang daripada prosedur yang dinyatakan dalam Kanun Tatacara Jenayah. Walaupun SOSMA hanya menyelaraskan perbicaraan kesalahan-kesalahan dan tidak membentuk kesalahan-kesalahan tersebut, tidak diragui bahawa seseorang yang dipertuduh dan dibicarakan bawah SOSMA akan kehilangan kebebasan kerana dia tidak dibenarkan diikat jamin. Oleh itu, dalam mentafsir SOSMA, mahkamah mesti menurut panduan prinsip pengiktirafan penuh hak-hak dan kebebasan asasi.

(3) Setiap Akta Parlimen atau undang-undang yang digubal bawah per. 149 mesti menyatakan secara khusus tindakan yang telah diambil oleh kumpulan orang, yang memerlukan pengisytiharan undang-undang tersebut. Terdapat tindakan-tindakan spesifik yang dibutirkan dalam per. 149(1) Perlembagaan dan SOSMA menyerap atau menyatakan hanya beberapa daripada tindakan-tindakan tersebut. Walaupun tiada ketaksaan sama ada SOSMA digubal bawah per. 149(1)(a), (b), (d) dan (f) Perlembagaan, terdapat ketaksaan sama ada pertuduhan terhadap responden-responden bawah s. 124L Kanun diniatkan oleh Parlimen untuk dikategorikan sebagai kesalahan keselamatan bawah per. 149(1) Perlembagaan.

(4) Mengguna pakai prinsip tafsiran statutori, tindakan yang cuba dilakukan responden-responden terangkum dalam ruang lingkup dan skop perenggan (e) per. 149(1) Perlembagaan dan melalui pengecualian langsung perenggan (e) per. 149(1) dalam resital SOSMA, Parlimen tidak mungkin meniatkan untuk menjadikan tindakan tersebut sebagai kesalahan keselamatan.

Case(s) referred to:

Majlis Agama Islam Wilayah Persekutuan v. Victoria Jayaseele Martin & Another Appeal [2016] 4 CLJ 12 FC ***(refd)***

Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

PP v. Yazid Sufaat & Ors [2014] 2 CLJ 670 CA ***(refd)***

PP v. Yuneswaran Ramaraj [2015] 9 CLJ 873 CA ***(refd)***

Re Application of Tan Boon Liat & Ors [1977] 1 LNS 107 FC ***(dist)***

Sng Hung Meng v. Public Utilities Board [1966] 1 LNS 182 FC ***(refd)***

Tan Sung Mooi v. Too Miew Kim [1994] 3 CLJ 708 SC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 84

Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969, s. 4(1)

Federal Constitution, arts. 5, 9, 10, 13, 149(1)(a), (b), (c), (d), (e)

Interpretation Acts 1948 and 1967, s. 17A

Penal Code, ss. 34, 124L, 130A(d), (h)

Security Offences (Special Measures) Act 2012, ss. 3, 12, 13(1), First Schedule

For the appellant - Awang Armadajaya Awang Mahmud; DPP

For the 1st respondent - Haniff Khatri, Muhammad Rafique & Fahmi Abd Moin; M/s Law Practice of Rafique

For the 2nd respondent - Zainur Zakaria & Mohd Akmal Afiq Mohamad; M/s Suhaimi Khor Zulkifli & Chang

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[Editor's note: Appeal from High Court, Kuala Lumpur; Criminal Application No: 44-103-10-2015 (affirmed).]

Reported by S Barathi

JUDGMENT

Tengku Maimun Tuan Mat JCA:

[1] This was an appeal by the prosecution against the decision of the High Court at Kuala Lumpur in allowing the notice of motion filed by Khairuddin bin Abu Hassan and Matthias Chang Weng Chieh (the respondents) for among others an order that they be released on bail. For the reasons that follow, we had unanimously dismissed the appeal.

The Background Facts

[2] On 31 July 2012, the Security Offences (Special Measures) Act 2012 (SOSMA) which was enacted by Parliament under art. 149(1) of the Federal Constitution came into force. Article 149(1) of the Federal Constitution reads:

Legislation against subversion, action prejudicial to public order, etc.

149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation:

(a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or

(b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or

(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or

(d) to procure the alteration, otherwise than by lawful means, of anything by law established; or

(e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or

(f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,

any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.

(2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, cease to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this Article.

[3] The preamble of SOSMA states:

An Act to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters.

WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia:

(1) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property;

(2) to excite disaffection against the Yang di-Pertuan Agong;

(3) which is prejudicial to public order in, or the security of, the Federation or any part thereof; or

(4) to procure the alteration, otherwise than by lawful means, of anything by law established;

AND WHEREAS Parliament considers it necessary to stop such action;

NOW, THEREFORE, pursuant to Article 149 of the Federal Constitution IT IS ENACTED by the Parliament of Malaysia as follows:

[4] Sections 12 and 13(1) of SOSMA provide that all security offences shall be tried by the High Court and that bail shall not be granted to a person who has been charged with a security offence. Section 3 of SOSMA defined "security offences" as the offences specified in the First Schedule. One of the offences specified in the First Schedule is an offence under s. 124L of the Penal Code which provides:

Attempt to commit sabotage

124L. Whoever attempts to commit sabotage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.

[5] The respondents were charged in the High Court at Kuala Lumpur for acting with common intention to attempt to commit sabotage of the banking and financial services of this country, an offence under s. 124L of the Penal Code read with s. 34 of the same Code. The charge against the respondents reads:

Bahawa kamu antara 28 Jun 2015 hingga 26 Ogos 2015 di beberapa lokasi iaitu

a) Di Pejabat Ketua Polis Bahagian Jenayah Ekonomi dan Kewangan Paris, Perancis

b) Balai Polis Charing Cross, London, United Kingdom

c) Pejabat Peguam Negara Switzerland, Bern, Switzerland

d) Balai Polis Wai Chan, Hong Kong dan

e) Ibu Pejabat Polis Cantonment, Singapore

Bagi mencapai niat bersama, kamu telah melakukan dengan niat, cubaan untuk melakukan sabatoj terhadap perkhidmatan perbankan dan kewangan Negara dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 124L, Kanun Keseksaan (Akta 574) dan dibaca bersama Seksyen 34 Kanun Keseksaan.

[6] The respondents filed a notice of motion seeking for the following orders:

(a) Bahawa pertuduhan di bawah seksyen 124L Kanun Keseksaan yang ditampilkan terhadap kedua-dua Pemohon adalah tidak tergolong sebagai pertuduhan untuk dibicarakan di bawah peruntukan Akta Kesalahan Keselamatan (Langkah-langkah Khas) 2012 (SOSMA 2012) Akta 747.

(b) Bahawa Mahkamah yang mulia ini melepaskan kedua-dua Pemohon dengan jaminan yang berpatutan; dan

(c) lain-lain perintah yang dianggap adil dan suaimanfaat oleh Mahkamah yang mulia ini.

[7] Pursuant to s. 84 of the Courts of Judicature Act 1964, the High Court referred the following questions to the Federal Court for determination:

(a) Whether the charge against the respondents under s. 124L of the Penal Code, fall outside the constitutional ambit of SOSMA pursuant to the provision of art. 149(1)(e) of the Federal Constitution?

(b) If the answer to Question 1 is in the affirmative, do the respondents have the right to be released on bail forthwith?

(c) If the answer to Question 1 is in the affirmative, should the trial of the charge against the respondents be conducted in the Sessions Court taking into account the sentencing provision under s. 124L of the Penal Code?

[8] The Federal Court declined to answer the questions posed and directed that the matter be decided by the High Court.

Findings Of The High Court

[9] The High Court Judge proceeded to hear the matter where Justice Mohd Azman Husin decided that the offence under s. 124L of the Penal Code is not a security offence falling within the purview and ambit of SOSMA.

[10] His Lordship considered s. 130A(h) of the Penal Code which defines "sabotage" as:

(a) an act of omission intending to cause harm:

(i) for the interest of foreign power or foreign organisations;

(ii) to premises or utilities used for national defence or for war; or

(iii) to the maintenance of essential services; or

(b) knowingly producing defective materials, premises or utilities used for national defence or for war.

[11] The learned judge also considered s. 130A(d) of the Penal Code which defines "essential services" to include "banking and financial services".

[12] His Lordship found that SOSMA was enacted pursuant to art. 149(1) of the Federal Constitution which specify six (6) categories of actions in respect of which laws may be enacted providing for special measures or powers. Having alluded to the six categories in paras. (a) to (f), His Lordship found that the recital to SOSMA specifies four categories, namely categories (a), (b), (d) and (f). He held the view that the action which the respondents

A are alleged to have attempted to commit fall within the ambit and purview of category (e) of art. 149(1) of the Federal Constitution which refers specifically to action "which are prejudicial to the maintenance or functioning of any supply or service to the public or any class of the public in the Federation or any part thereof.".

B **[13]** By the express exclusion of para. (e) of art. 149(1) of the Federal Constitution in the preamble of SOSMA, the learned judge opined that Parliament, in enacting SOSMA never intended to designate such action described or stipulated therein as security offence. In taking the approach that his task was to interpret an Act according to the intent of the Parliament, His C Lordship referred to among others the case of *Tan Sung Mooi v. Too Miew Kim* [1994] 3 CLJ 708; [1994] 3 MLJ 117 and *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97.

[14] For the above reasons, the learned High Court Judge answered the D three questions in the affirmative, namely:

(i) that the charge against the respondents under s. 124L of the Penal Code falls outside the constitutional ambit of SOSMA pursuant to art. 149(1)(e) of the Federal Constitution;

E (ii) that the respondents have the right to be released on bail; and

(iii) that the charge against the appellants be tried in the Sessions Court.

[15] Aggrieved by the decision of the High Court, the prosecution appealed to this court.

F **The Appeal**

[16] Before us learned Deputy Public Prosecutor (DPP) raised the following issues:

(i) whether SOSMA is a law promulgated under art. 149 of the Federal G Constitution;

(ii) whether the failure or omission to include the recital of art. 149(1)(e) of the Federal Constitution renders SOSMA to fall outside the ambit of art. 149 of the Federal Constitution;

H (iii) whether the First Schedule of SOSMA is null and void and of no effect notwithstanding that it has not been declared unconstitutional; and

(iv) whether offences under s. 124L of the Penal Code must be tried in accordance with ss. 12 and 13 of SOSMA.

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[17] On the first issue, learned DPP submitted that there was no order of the High Court declaring that SOSMA is *ultra vires* the Federal Constitution and therefore null and void. SOSMA is thus a good law and the learned High Court Judge was in serious error in ruling that SOSMA is not a law enacted pursuant to art. 149 of the Federal Constitution. A

[18] In respect of the second issue, learned DPP contended that by virtue of preamble (3) of SOSMA which reads: "which is prejudicial to public order in, or the security of, the Federation or any part thereof", s. 124L of the Penal Code is covered under art. 149 of the Federal Constitution. Relying on the case of *Re Application of Tan Boon Liat & Ors* [1977] 1 LNS 107; [1977] 2 MLJ 18, learned DPP further contended that even in the extreme case where there is no recital or preamble, where the enacting part is explicit and unambiguous, the preamble cannot be resorted to, to control, qualify or restrict the interpretation of SOSMA. B C

[19] As for the third and fourth issues, learned DPP submitted that since there was no challenge on the First Schedule of SOSMA, it remains good law. In this regard, learned DPP's complaint was that the learned judge erred in declaring SOSMA inapplicable to the offence under s. 124L of the Penal Code without declaring the First Schedule of SOSMA null and void. Learned DPP submitted that it is clear that art. 149 covers SOSMA, making the entire Act fall into place. And if SOSMA is to be applied, then s. 13 applies which makes the offence under s. 124L unbailable. D E

[20] Having perused the written submission and having heard learned DPP orally, we found that the gist of DPP's contention is this. If the charge against the respondents is a charge under Chapter VI of the Penal Code, which s. 124L falls under, then the respondents must be tried under SOSMA, and since SOSMA or the First Schedule of SOSMA has not been ruled unconstitutional, the charge against the respondents under SOSMA prevails. F

[21] At the outset it is pertinent to note that art. 149(1) of the Federal Constitution pursuant to which SOSMA was enacted, enumerates six (6) acts under paras. (a) to (f). In the High Court, the issue was not about the constitutionality of SOSMA or the First Schedule of SOSMA, but the issue was whether, because of the omission to recite para. (e) of art. 149(1) of the Federal Constitution in the preamble of SOSMA, s. 124L falls outside the ambit of SOSMA and art. 149. G

[22] Given the above scenario, there was no ruling by the learned High Court Judge that SOSMA or the First Schedule is unconstitutional. In fact, as regards the second issue, the learned High Court Judge did not rule that SOSMA falls outside the ambit of art. 149 of the Federal Constitution. What was ruled by the learned High Court Judge was that because of the omission to include paragraph or recital (1)(e) of art. 149 of the Federal Constitution H I

to the preamble of SOSMA, s. 124L of the Penal Code (which falls under para. (1)(e) of art. 149 of the Federal Constitution) does not fall within the ambit of SOSMA.

[23] Flowing from the above, we were thus not concerned with the constitutionality of SOSMA and neither were we concerned with the constitutionality of the First Schedule of SOSMA. In the absence of any challenge and ruling on the constitutionality of SOSMA, it must be taken that SOSMA remains a valid piece of legislation. Hence, the first, the second and the third issues canvassed by the DPP need no further deliberation or determination.

[24] The issue for our determination was the fourth issue, namely whether s. 124L of the Penal Code under which the respondents are charged fall outside the constitutional ambit of SOSMA. Put another way, the issue before us was simply whether the High Court Judge erred in deciding that s. 124L of the Penal Code did not fall within the constitutional ambit of SOSMA pursuant to art. 149(1)(e) of the Federal Constitution.

Our Decision

[25] When Parliament enacted SOSMA, it adopted paras. (a), (b), (d) and (f) of clause (1) of art. 149 of the Federal Constitution as recitals (1), (2), (3) and (4) in the preamble of SOSMA. Paragraphs (c) and (e) of cl. (1) of art. 149 which pertain to races and services to the public, respectively, are expressly excluded in the preamble of SOSMA.

[26] To recapitulate, the charge against the respondents is for attempting to sabotage the banking and financial services of the country. Under s. 124L of the Penal Code, it is an offence to sabotage essential services. Banking and financial service is included in the definition of essential services.

[27] In concluding that the charge against the respondent falls within the ambit and purview of recital or para. (e) of art. 149(1) of the Federal Constitution, the learned judge took into account the definition of "sabotage" and the definition of "essential services" under s. 130A(h) of the Penal Code. We found no error in the approach taken by the learned trial judge. It is an established canon of statutory interpretation that the provisions of a law or a statute must be looked at as a whole and not in isolation (see *Sng Hung Meng v. Public Utilities Board* [1966] 1 LNS 182; [1966] 2 MLJ 25; *Majlis Agama Islam Wilayah Persekutuan v. Victoria Jayaseele Martin and Another Appeal* [2016] 4 CLJ 12; [2016] 2 MLJ 309). We therefore agreed with the learned judge that the offence under s. 124L of the Penal Code for which the respondents are charged fall within art. 149(1)(e) of the Federal Constitution, namely an act "which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof".

[28] Further, we agreed with the learned judge that in determining whether the offence under s. 124L of the Penal Code is a security offence under SOSMA, the proper approach to be adopted is the purposive approach.

[29] In this regard, s. 17A of the Interpretation Acts 1948 and 1967 enjoins a court to interpret a provision of an Act that would promote the purpose or object underlying the Act. It reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[30] In *Palm Oil Research and Development Board Malaysia & Anor (supra)*, Haidar CJ (Malaya) said at pp. 272-273 (CLJ); p. 105 (MLJ):

> [2] I would, in addition, like to expressly state that I agree with the reason advanced by my learned brother, Chief Judge (Sabah & Sarawak) in answering the questions posed for our consideration. It is clear beyond doubt that in view of s. 17A of the Interpretation Acts 1948 and 1967 there is now a statutory recognition for the courts to take purposive approach in the interpretation of statutes including taxing statutes.
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> [3] In England, though there is no equivalent provision of our s. 17A there, the House of Lords in dealing with a taxing statute in *Pepper (Inspector of Taxes) v. Hart* [1993] AC 593 (by majority) took a purposive approach. This is what Lord Griffiths said at p 617:
>
> > The ever increasing volume of legislation must inevitably result in ambiguities of statutory language which are not perceived at the time the legislation is enacted. The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the Legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of the legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.

[31] In a more recent case of *PP v. Yuneswaran Ramaraj* [2015] 9 CLJ 873; [2015] 6 AMR 271, Raus Sharif PCA said at p. 280:

> [23] The reasons for the enactment of the statute are the safest guide to the interpretation. It would be essential for the court to examine the reasons of enactment of a particular provision in order to find out its ultimate impact *vis-a-vis* the constitutional provisions. In the Indian Supreme Court case of *Utkal Contractors* and *Joinery P Ltd & Ors v. State of Orissa & Ors* [1987] 3 SCC 279, it was profoundly put as follows:

A statute is best understood if we know the reason for it. The reason for the statute is the safest guide to the interpretation. The words of the statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are statements or objects and reasons when the Bill is presented to Parliament, the report of committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set sail to the wind, the interpreter may proceed ahead. No provision in the statute and no words of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or words is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for.

[32] The intention of Parliament as to the purpose and object of SOSMA can be seen from the following speech of the Minister in the Prime Minister's Department during the second and third reading of SOSMA Bill 2012:

Tuan Yang di-Pertua, Rang Undang-undang Kesalahan Keselamatan (Langkah-Langkah Khas) 2012, merupakan undang-undang yang menentang keganasan. ... bertujuan untuk melindungi Malaysia daripada terdedah kepada ancaman pengganas. Kita tidak mampu dengan izin, we cannot afford untuk menunggu sehingga suatu perkara berlaku kepada negara kita. Sebagai contoh, takkan hendak tunggu Menara Berkembar Petronas diletupkan kemudian keesokan harinya kita panggil Parlimen barulah Rang Undang-undang Kesalahan Keselamatan (Langkah-Langkah Khas) ini digubal.

Kita harus belajar daripada pengalaman Amerika Syarikat kerana mereka hanya menggubal undang-undang yang tegas selepas tragedi 11 September 2001. Kira-kira 11 tahun dahululah. Malaysia tidak harus berlengah dan membiarkan terdapat kelompangan dalam undang-undang kita ke arah menentang keganasan. ...

Kumpulan-kumpulan keganasan yang dimaksudkan ialah kumpulan-kumpulan militan atau individu yang bertindak secara sewenang-wenangnya, mendatangkan ancaman terhadap nyawa dan harta benda kepada mana-mana individu atau lokasi sasarannya. Kumpulan-kumpulan keganasan yang dimaksudkan ialah kumpulan-kumpulan yang mempunyai objektif dan agendanya sendiri mendatangkan ancaman keselamatan tidak kira apa asas perjuangannya. Sebagai contoh Jemaah Islamiah dan al-Qaeda yang telah jelas mendatangkan ancaman terhadap keselamatan dunia.

...

Kerajaan menggunakan kuasa yang diberikan di bawah Perkara 149, Perlembagaan Persekutuan untuk menggubalnya. Tentu sahaja mukadimahnya akan menyerupai ISA kerana setiap Akta yang digubal di bawah Perkara 149 hendaklah diperincikan tindakan yang telah diambil itu. Akta ini adalah untuk membendung keganasan dan memerlukan kuasa Perkara 149.

[33] From the statements by the Minister, it is crystal clear that the purpose and objective of SOSMA is to combat terrorism.

[34] We next made reference to the internal aid namely the preamble, the scheme and the provisions of SOSMA. The preamble of SOSMA as set out above shows that SOSMA was enacted to deal with four out of the six categories of action under art. 149(1). The scheme and the provisions of SOSMA were designed to limit the fundamental liberties under arts. 5, 9, 10, and 13 of the Federal Constitution and to depart from the procedures laid down under the Criminal Procedure Code, the law which governs the conduct of criminal cases. Although SOSMA merely regulates the trial of the offences and does not create the said offences (see *PP v. Yazid Sufaat & Ors* [2014] 2 CLJ 670; [2015] 1 MLJ 571), undoubtedly a person charged and tried under SOSMA will lose his liberty as he will be denied bail. In this regard, the learned judge was of the view that in interpreting SOSMA the court should be guided by the principle of giving full recognition to the fundamental rights and freedoms. We found no error in the approach taken by the learned judge.

[35] At this juncture, it is pertinent to highlight the Minister's speech in tabling SOSMA Bill that "setiap Akta yang digubal di bawah Perkara 149 hendaklah diperincikan tindakan yang telah diambil itu". Indeed, there are specific actions enumerated in art. 149(1) of the Federal Constitution and SOSMA had adopted or recited only some of the actions. Taking the Minister's speech, every Act of Parliament or law enacted under art. 149 must stipulate specifically the action that has been taken by the body of persons, which necessitates the promulgation of such a law.

[36] To reiterate, the preamble of SOSMA recites the action under paras. (a), (b), (d) and (f) of clause (1) of art. 149 and not the action under paras. (c) and (e) of clause (1) of art. 149 of the Federal Constitution. Whilst we found no ambiguity that SOSMA was enacted under art. 149(1)(a), (b), (d) and (f) of the Federal Constitution, we found ambiguity whether the charge against the respondents under s. 124L of the Penal Code was intended by Parliament to be categorised as security offences under art. 149(1) of the Federal Constitution.

[37] The ambiguity arises from the fact that the offence created by s. 124L of the Penal Code involves an action which falls under para. (e) of cl. (1) of art. 149 and para. (e) has been expressly excluded from the preamble of SOSMA.

[38] The incorporation or the presence of s. 124L in the First Schedule of SOSMA must not be looked at in isolation. Notwithstanding s. 124L being listed in the First Schedule of SOSMA, regard must be given to the overall scope, purpose and object of SOSMA. In our judgment, the inclusion of s. 124L in the First Schedule does little to clarify the ambiguity as s. 124L cannot change the scope, purpose and object of the enactment of SOSMA. SOSMA being a law which prescribes limitations on the liberty clauses must be construed religiously and any ambiguity must be resolved in favour of the respondents.

[39] We were mindful of the judgment of the Federal Court in *Re Application of Tan Boon Liat & Ors (supra)* relied upon by learned DPP. In *Tan Boon Liat & Ors,* the applicants (appellants) were served with a detention order under s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969 ("the Ordinance"). The grounds on which the detention order was made state, among others:

> That you are an active local 'infra-structure' member of an international drug distribution syndicate. Your activities have not only damaged the international image of Malaysia but have also caused an increase in criminal activities involving violence connected with drugs and you have thereby acted in a manner prejudicial to public order.

[40] The sole question before the Federal Court was whether the grounds on which the orders for detention made against the appellants, namely trafficking in drugs, were made outside the scope and ambit of the Ordinance. For ease of reference we reproduce below the judgment of Suffian LP at p. 19 where His Lordship said:

> These appeals were heard together and raise the question whether a person suspected of being engaged in drug trafficking may lawfully be detained under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 ("the Ordinance") ...
>
> The preamble of the Ordinance reads:
>
> AND WHEREAS the Yang di-Pertuan Agong is satisfied that immediate action is required for securing public order, the suppression of violence and the prevention of crimes involving violence.
>
> Section 4(1) of the Ordinance reads:
>
> 4.(1) If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression

of violence or the prevention of crimes involving violence that the person should be detained, the Minister shall make an order ("hereinafter referred to as a 'detention order') directing that that person be detained for any period not exceeding two years.

[41] The learned Suffian LP further said:

After examining several authorities the learned judge concluded, and with respect we agree, that the appellant's detention came within the scope and ambit of the Ordinance. He said at pages 85 and 86:

> Although the preamble is part of a statute, it is not an operating part thereof. The aid of the preamble can be taken only when there is some doubt about the meaning of the operative part of the statute. The preamble undoubtedly throws light on the intent and design of the enacting authority and indicates the scope and purpose of the legislation itself but it should not be read as part of the particular section of that written law. Where the enacting part is explicit and unambiguous the preamble cannot be resorted to, to control, qualify or restrict it. ...
>
> The most important aspect in this regard is that the preamble cannot be invoked for the purpose of creating ambiguity in a statute ...
>
> It would appear to me that the preamble to the Ordinance is not relevant for the purposes of construing or considering the scope of the provisions of section 4(1) thereof as there is no ambiguity whatsoever in the latter. ... The scope of the Ordinance is no doubt indicated and reflected in the recital I have adverted to, namely, the requirement of immediate action for securing public order, the suppression of violence and the prevention of crimes involving violence. These are general and wide words projecting the purpose and purport of the Ordinance and, in my view, the enacting provisions of section 4 elaborate and provide for that purpose and purport in much wider terms, as they empower the Minister to order the detention of a person with a view to preventing him from acting in any manner prejudicial to public order (emphasis mine) – an amplification of the phrase "for securing public order' appearing in the preamble.".

[42] We observed that in *Tan Boon Liat*, the court found no ambiguity in s. 4(1) of the Ordinance and the reason is apparent from the wordings in the preamble and s. 4(1) itself. Section 4(1) clearly specifies the circumstances in which the Minister can arrive at his subjective satisfaction for the purposes of making a detention order with a view to preventing any person from acting in any manner *prejudicial to public order or where it is necessary for the suppression of violence or the prevention of crimes involving violence. These are consistent with the preamble which states "... for securing public order, the suppression of violence and the prevention of crimes involving violence.*" (emphasis added).

[43] The position is different though in the instant appeal. Given that s. 124L of the Penal Code falls under cl. 1(e) of art. 149 of the Federal Constitution and in the light of the express exclusion of para. (e) of cl. (1) of art. 149 of the Federal Constitution in the preamble of SOSMA, we found ambiguity whether Parliament had intended to categorise an offence under s. 124L of the Penal Code as a security offence.

Conclusion

[44] Applying the principles of statutory interpretation as alluded to earlier, we agreed with the learned judge that the action which the respondents were alleged to attempt to commit falls within the ambit and purview of para. (e) of art. 149(1) of the Federal Constitution and by the express exclusion of para. (e) of art. 149(1) in the recital of SOSMA, Parliament could not have intended to designate such act as a security offence.

[45] Having found no substantial and compelling reason to disturb the finding of the learned High Court Judge, we unanimously dismissed the appeal and we affirmed the order of the High Court.